

## **EXHIBIT S**



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

May 10, 2017

**BY EMAIL**

Daniel M. Gitner, Esq.  
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**Re: *United States v. Percoco, et al.*, 16 Cr. 776 (VEC)**

Dear Counsel:

We write in response to your letter of May 2, 2017, in which you provide a supplemental request for a bill of particulars in the above-captioned matter. This letter supplements our previous response, dated April 10, 2017.

You seek “the specific wires upon which the Government intends to rely . . . to prove the wire fraud conspiracy charged in Count Nine.” This request is premature and, accordingly, would “unduly restrict the government’s ability to present its case,” *United States v. Booth*, No. 99 Cr. 378 (LBS), 1999 WL 1192317, at \*8 (S.D.N.Y. Dec. 14, 1999); *see also United States v. Chalmers*, 410 F. Supp. 2d 278, 285 (S.D.N.Y. 2006) (denying motion for disclosure of all wire transmissions to be relied on at trial because “given the volume of documents in this case, it would be premature to require the Government to limit itself now to the specified acts of the Superseding Indictment or any additional acts it might be able to specify in a bill of particulars”). The Government agrees, however, to disclose a list of wire transmissions upon which it intends to rely sufficiently in advance of trial. *See Chalmers*, 410 F. Supp. 2d at 286 (denying motion for bill of particulars but ordering the Government “to identify, thirty days before the start of trial, . . . any allegedly unlawful transmissions and transactions, not already identified in the Superseding Indictment, that it will seek to prove at trial”); *cf. United States v. Silver*, 117 F. Supp. 3d 461, 471 (S.D.N.Y. 2015) (ordering Government either to identify wire transmissions to be relied on at trial or explain why it should not so identify two and a half months prior to trial).

If you would like to confer regarding your requests or any of the information in this letter, please let us know.

Very truly yours,

JOON H. KIM  
Acting United States Attorney

By: /s  
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